

Notice of Allowability

Application No.

10/779,886

Examiner

Frederick C. Nicolas

Applicant(s)

SPECKHART ET AL.

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/17/2004.
2. ☒ The allowed claim(s) is/are 1-12.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☒ including changes required by the attached Examiner's Amendment / ~~Comment~~ or in the Office action of
Paper No./Mail Date 11/18/2004.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 11/18/2004.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with the applicants' attorney Mr. Todd T. Taylor on 11/29/2004.

The application has been amended as follows:

IN THE SPECIFICATION:

On page 12 of the abstract, line 2, "includes the steps of: fluidly coupling" has been deleted and --which includes-- has been inserted; line 2, after "device", --fluidly coupled-- has been added; line 3, "determining" has been deleted; line 4, after "can", --being determined-- has been added; line 4, "actuating the solenoid valve" has been deleted, and --and the solenoid valve being actuated-- has been added; line 6, "determining" has been deleted; line 7, after "can", --being determined; where-- has been added; line 8, "actuating the solenoid valve" has been deleted, and --the solenoid valve being actuated-- has been added.

IN THE DRAWINGS:

Fig. 3 and Fig. 4 have been labeled as --prior art--.

Allowable Subject Matter

2. Claims 1-12 are allowed.

3. The following is an examiner's statement of reasons for allowance: the prior art fails to disclose or render obvious a method of discharging an aerosolized fluid from an aerosol can to an ambient environment in combination with the other claimed limitations of claim 1:

the steps of "determining a duration of a second release period of the aerosolized fluid from the aerosol can, said duration of said second release period being randomly varied to avoid user habituation of the aerosolized fluid".

Further, the prior art fails to disclose or render obvious a method of discharging an aerosolized fluid from an aerosol can to an ambient environment in combination with the other claimed limitations of claim 9:

the steps of "determining a decreasing pressure profile over time of the aerosolized fluid within the aerosol can; determining a duration of a second release period of the aerosolized fluid from the aerosol can, dependent upon said decreasing pressure profile, said duration of said second release period being increased in both frequency and duration over time relative to said first release period".

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Madsen et al. 5,029,729, Nixon, Jr. 3,632,020, Smrt 6,276,574,

Dial et al. 5,772,074, Nishino et al. 5,297,988, Nixon, Jr. Et al. 3,677,441, Freyre 4,184,612, Madsen et al. 4,658,985, Winder 3,666,144, Garon 6,216,925, Contadini et al. 6,267,297 and Ulczynski et al. 6,409,093 disclose other types of method of discharging an aerosolized fluid.

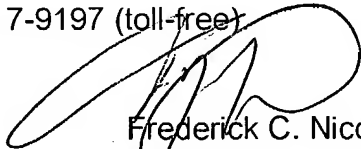
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on (571)-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
November 29, 2004



Frederick C. Nicolas
Patent Examiner
Art Unit 3754

11/29/04